

Supreme Court of Kentucky

2009- 06

ORDER

**In Re: Amendments to the Rules of Administrative Procedure
 AP Part IX Procedures for Appointment of Interpreters**

It is HEREBY ORDERED that Part IX of the Rules of Administrative Procedure are hereby deleted in their entirety and shall be replaced by the following:

Section 1. Statement of Purpose

Pursuant to KRS 30A.405(2), the Supreme Court is required to prescribe standards for the appointment, qualifications, duties, and other matters relating to interpreters.

Section 2. Definitions

As used throughout this Rule, the following definitions shall apply:

- (1) "AOC" means the Administrative Office of the Courts.
- (2) "Acceptable criminal background" means a criminal background having no conviction of any felony or of a misdemeanor involving moral turpitude, dishonesty, false statements, or fraud.
- (3) "Appointing/Requesting authority" means the Judge, Chief Judge, Circuit Court Clerk, Supreme Court Clerk, Clerk of the Court of Appeals, AOC Director, or designee, who appoints or requests an interpreter to provide services for a court proceeding or direct services to the Court of Justice.
- (4) "AOC Interpreter Directory" means the listing of licensed freelance interpreters and staff interpreters for the deaf and hard of hearing and certified and registered spoken language freelance interpreters and staff interpreters who have been approved by the AOC for interpreting in a court proceeding and providing direct services to the Court of Justice. Requirements for approval and entry in the Directory are contained in these rules.

- (5) "Certified spoken language interpreter" means an interpreter listed in the AOC Interpreter Directory who has met the requirements set forth in the Kentucky Court of Justice Certification Policy.
- (6) "Code of Professional Responsibility" means the Code of Professional Responsibility for Interpreters adopted by Order of the Kentucky Supreme Court, containing Canons of professional conduct which are binding upon all persons, agencies, and organizations that administer, supervise, or deliver interpreting services to the judiciary.
- (7) "Contact person" means the individual designated in each county by the Chief Circuit Judge or Chief District Judge of the county who shall be responsible for scheduling interpreters for court proceedings or direct services, and for notifying the AOC Court Interpreting Services Division when scheduling interpreters for trials or grand jury proceedings, or when there is difficulty scheduling an interpreter. The "contact person" may be a judge's secretary, court administrator, or other Court of Justice employee designated by the judge.
- (8) "Court proceeding" means a civil, criminal, domestic relations, juvenile, traffic or other in-court proceeding.
- (9) "Court of Justice" means the Kentucky Court of Justice.
- (10) "Court of Justice entity" means any office under the purview of the Judicial Branch.
- (11) "Criminal background" means the KYCourtNet disposition report provided by the AOC.
- (12) "Direct services" means out-of-court interpreting services provided by a Court of Justice entity which enables the entity to carry out its duties and responsibilities as directed by statute and/or rule of court.
- (13) "Freelance interpreter" means a contract interpreter who is not employed by the Court of Justice as an interpreter. A freelance interpreter shall meet the qualification criteria as required by these rules.
- (14) "Interpreter for the deaf and hard of hearing" means an interpreter who is licensed pursuant to KRS Chapter 309 and other applicable Kentucky law and who has met additional requirements set forth in the Kentucky Court

of Justice Certification Policy for Visual Language Interpreters.

- (15) "Lapse of certification" means the failure to maintain the continuing education units and court observation hours required by these rules.
- (16) "Provisional spoken language interpreter" means an interpreter not listed in the AOC Interpreter Directory but who has met certain minimum requirements set forth in the Kentucky Court of Justice Certification Policy.
- (17) "Registered spoken language interpreter" means an interpreter listed in the AOC Interpreter Directory who has met the requirements set forth in the Kentucky Court of Justice Certification Policy.
- (18) "Remote interpreting services" means the provision of telephone, videoconference, web-based, or other available remote interpreting equipment as approved by the AOC.
- (19) "Staff interpreter" means an interpreter who is employed by the Court of Justice to provide interpreting services for court proceedings and direct services. A staff interpreter shall meet the qualification criteria required by these rules.
- (20) "Uniform Payment Rate" means the hourly pay rate and travel rate given to freelance interpreters for services rendered while interpreting for the Court of Justice. This rate shall be set by the AOC Director.

Section 3. Oath

- (1) Before accepting assignment as a freelance interpreter in a court proceeding, or at the time of employment as a staff interpreter, an individual shall have read the Code of Professional Responsibility for Interpreters, KRE 604 and KRS 422A.0604, and taken the oath as set forth in Section 3(2). A provisional interpreter or an interpreter provided by an agency other than the AOC shall be administered the oath by the judge or chief judge prior to each court proceeding. A copy of the oath shall be signed by the freelance interpreter or staff interpreter and kept on file at the AOC Court Interpreting Services Division.
- (2) The following oath shall be administered to all freelance interpreters and staff interpreters in accordance with the provisions of this section:

Do you solemnly swear or affirm you have the knowledge, skills, experience, and/or education to interpret this proceeding, and you will interpret accurately, completely and impartially, using your best skill and judgment in accordance with the standards prescribed by law, any Code of Ethics under which you have been certified, and the Code of Professional Responsibility for Interpreters, and will make a true translation pursuant to KRE 604 and KRS 422A.0604.

Section 4. Appointment of and Requests for Interpreters

- (1) Pursuant to KRS 30A.410 to 30A.435, in any court proceeding the court shall appoint an interpreter for parties, jurors, or witnesses as follows:
 - (a) Persons who because of deafness or who are hard of hearing:
 - (i) Use sign language such as pidgin, signed English, American Sign Language, or gestures; or
 - (ii) Are oral/aural and use interpreters and assistive technology as their primary mode of communication;
 - (b) Persons who cannot communicate in English; and,
 - (c) Any other person who has, in the opinion of the court, another type of disability which will prevent said person from properly understanding the nature of the proceedings or will substantially prejudice his or her rights.
- (2) The Court of Justice shall provide an interpreter for direct services upon the request of an individual as described in subsection (1) above or as otherwise appears necessary.

Section 5. Responsibility for Payment for Interpreting Services

- (1) Pursuant to KRS 30A.415, the Court of Justice shall be responsible for payment, including ordinary and reasonable expenses, for interpreting services for court proceedings and direct services provided by a Court of Justice entity. In cases in which the interpreter is providing services out of court, other than direct services, even though that service relates to a pending court case, the person or agency requiring the services of the

interpreter shall be responsible for payment.

- (2) The AOC shall not pay for interpreting services provided to or for a non-Court of Justice entity, even when a party is ordered by the Court, or referred by a Court of Justice entity, to obtain services or assistance from the non-Court of Justice entity.

Section 6. Responsibility for Obtaining and Scheduling an Interpreter

- (1) A contact person shall be designated in each county who shall be responsible for scheduling a staff interpreter or freelance interpreter for court proceedings or direct services. The contact person may be a judge's secretary, court administrator, or other Court of Justice employee designated by the Chief Circuit Judge or Chief District Judge.
- (2) Each Court of Justice entity shall be responsible for notifying the contact person or the AOC Court Interpreting Services Division of the need for scheduling interpreters as necessary for direct services.
- (3) When scheduling, the Court or Court of Justice entity shall make efforts to determine if a conflict exists for an interpreter by providing the interpreter with the party's name, county, case type, charge(s) and charge(s) date(s) if any.
- (4) If there is difficulty obtaining and scheduling an interpreter, the contact person shall, if possible, notify the AOC Court Interpreting Services Division at least two (2) weeks prior to the need for the interpreting service, and the Interpreting Services Division will assist with obtaining and scheduling an interpreter.
- (5) The contact person shall, if possible, notify the AOC Court Interpreting Services Division when scheduling interpreters for trials or grand jury proceedings.
- (6) All cases requiring interpreters should be called at the end of the court docket or at another appropriate time during the docket when they can be called as a group in an effort to reduce the cost of the interpreting service and ensure the interpreter is not unduly fatigued.

- (7) In an effort to promote judicial economy and enhance the judicial process for interpreting services each county or judicial district shall generate a local or regional protocol with the assistance of the AOC Court Interpreting Services Division, for efficient use of the interpreting services, or an interpreting docket where all such cases may be heard. Staff interpreters and freelance interpreters should not wait more than thirty (30) minutes to interpret.
- (8) All efforts shall be made to schedule a staff interpreter for court proceedings and direct services. If a staff interpreter is not available, then a certified freelance interpreter may be scheduled. If no certified freelance interpreter is available, then a registered freelance interpreter may be scheduled. If no registered freelance interpreter is available, then a provisional freelance interpreter may be scheduled.
- (9) For trials and grand jury proceedings, all efforts should be made to schedule a staff interpreter. If a staff interpreter is not reasonably available, then a certified freelance interpreter shall be scheduled.
- (10) Absent a showing of extraordinary circumstances, no person who is a family member or friend of the person needing interpreting services shall be appointed/obtained to provide said services.
- (11) Each Court of Justice entity shall be required, when practical, to inform the contact person of the need for interpreting services at a court proceeding.

Section 7. Team Interpreting Requirements

- (1) When interpretation for two or more hours is required without breaks, a team of two (2) interpreters should be appointed, except in trials and grand jury proceedings, in which case a team of two (2) interpreters is required and shall be appointed. Additional two-person teams may be required if more than one person requires services at the same time.
- (2) Team members should rotate every thirty minutes to enhance accuracy and prevent fatigue.

Section 8. Interpreters for the Deaf and Hard of Hearing

- (1) Pursuant to KRS 30A.405, any person appointed/obtained as a staff interpreter or freelance interpreter shall be qualified in accordance with these rules to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.
- (2) In order to be designated a qualified interpreter for the Court of Justice and be listed in the AOC Interpreter Directory, each interpreter for the deaf and hard of hearing shall meet the following qualifications:
 - (a) Staff interpreters and freelance interpreters shall be licensed in accordance with KRS 309.301 to 309.319 and 201 KAR 39:030 and shall possess all certifications required therein. Additionally, they shall
 - (b) Have an acceptable criminal background;
 - (c) Attend the AOC orientation workshop;
 - (d) Obtain the hours of court observation or work as required by the AOC; and
 - (e) Read the Code of Professional Responsibility, KRE 604 and KRS 422A.0604, and take the oath in accordance with Section 3 of these rules.
- (3) In order to maintain his or her status as a qualified interpreter for the Court of Justice and continue to be listed in the AOC Interpreter Directory, each interpreter for the deaf and hard of hearing shall meet the following requirements:
 - (a) Maintain a valid license in accordance with the requirements of KRS 309.300 to 309.319 and 201 KAR 39:030;
 - (b) Comply with continuing education requirements established by the AOC Court Interpreting Services Division; and
 - (c) Obtain the hours of court observation or work as required by the AOC Court Interpreting Services Division.
 - (d) Additionally, a freelance interpreter shall annually update his or her personal information on file with the AOC, including the submission of an updated criminal background check.

- (4) Interpreters with Certified Deaf Interpreter-Provisional ("CDI-P") or Reverse Skills Certified ("RSC") certification may be obtained to serve as needed by either party to facilitate communication.
- (5) A licensed freelance interpreter shall, upon request by the contact person or appointing/requesting authority, present his or her license for the purpose of determining whether the license is currently valid.
- (6) If the person who is deaf or hard of hearing also has minimal language competency, a secondary disability, and/or extensive use of his/her own gestural system such that a qualified interpreter is unfamiliar with the uniqueness of the communication, the court shall appoint a licensed deaf relay interpreter to assist the qualified interpreter in providing interpretation.
- (7) Pursuant to KRS 30A.400(3), if the eligibility of the person to receive the services of an interpreter is challenged, the judge may, for good cause shown, hold a hearing to determine the bona fide need for interpreting services. If it is determined that the person is not entitled to interpreting services, then no portion of these rules shall apply to said person.
- (8) When a person does not request an interpreter, but appears to be deaf or hard of hearing, the court shall conduct a brief voir dire to determine whether or not an interpreter is needed.
- (9) Before commencing the interpreting process, the appointing/requesting authority shall make a determination that the interpreter is able to readily communicate with the person needing interpreting services and is able to accurately repeat and translate the statements of that person.

Section 9. Spoken Language Interpreters

- (1) Pursuant to KRS 30A.405, any person appointed/obtained as a staff interpreter or freelance interpreter shall be qualified in accordance with these rules to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.
- (2) No individual who has worked as a staff interpreter or freelance interpreter before adoption of the requirements herein shall be automatically a

certified or registered interpreter as defined in this section.

- (3) The AOC Court Interpreting Services Division shall have the authority to establish policies and procedures for time limits and scoring standards for the qualification process.
- (4) In order to be designated as a certified or registered interpreter for the Court of Justice and be listed in the AOC Interpreter Directory, each spoken language interpreter shall meet the following qualifications:
 - (a) Have an acceptable criminal background;
 - (b) Pass the requisite examinations administered by the AOC;
 - (i) The interpreter shall be designated as either certified or registered based upon the interpreter's test scores.
 - (c) Attend the AOC orientation workshop;
 - (d) Obtain the hours of court observation or work as required by the AOC Court Interpreting Services Division; and
 - (e) Read the Code of Professional Responsibility, KRE 604 and KRS 422A.0604, and take the oath in accordance with Section 3 of these rules.
- (5) In order to maintain his or her designated status and continue to be listed in the AOC Interpreter Directory, each certified and registered interpreter shall:
 - (a) Comply with the continuing education requirements established by the AOC Court Interpreting Services Division;
 - (b) Obtain the hours of court observation or work as required by the AOC Interpreting Services Division; and
 - (c) Comply with the Code of Professional Responsibility.
 - (d) Failure by a freelance interpreter to comply with the above-listed requirements may result in either temporary removal from the AOC Interpreter Directory, or lapse of certification and permanent removal from the AOC Interpreter Directory.
- (6) Additionally, a freelance interpreter shall annually update his or her personal information on file with the AOC. Personal information shall be submitted every year before July 1. A sixty (60) day grace period shall be

allowed after July 1, during which time individuals may continue to interpret for the Court of Justice and may renew the necessary information.

- (7) The AOC shall conduct annually a criminal background check on all interpreters listed in the AOC Interpreter Directory.
- (8) It is the responsibility of the staff and freelance interpreter to renew his or her certification or designated status. Renewal forms may be obtained at the AOC and should be submitted at least 30 days prior to expiration of certification to avoid a lapse in certification.
- (9) Proof of compliance with the continuing education units and the required court observation hours shall be submitted to the AOC Court Interpreting Services Division bi-annually before July 1. A sixty (60) day grace period shall be allowed after July 1, during which time individuals may continue to interpret for the Court of Justice and may submit the necessary documents to renew their certification.
- (10) Lapsed Certification Freelance Interpreters:
 - (a) Failure to comply with the continuing education units and court observation requirements shall result in a lapsed certification and the interpreter may be removed from the AOC Interpreter Directory based on the recommendation of the AOC Court Interpreting Services Division. An interpreter with a lapsed certification shall not be permitted to interpret for the Court of Justice.
 - (b) A lapsed certification may be renewed. The AOC may require that a person applying for renewal of the certification and to be re-listed in the AOC Interpreting Directory show evidence of completion of the required continuing education units and court observation hours as described in the AOC's Spoken Language Certification Policy.
- (11) Pursuant to KRS 30A.400(3), if the eligibility of the person to receive the services of an interpreter is challenged, the judge may, for good cause shown, hold a hearing to determine the bona fide need for interpreting services. If it is determined that the person is not entitled to interpreting services, then no portion of these rules shall apply to said person.

- (12) When a person does not request an interpreter but appears to have limited ability to communicate in English, the court shall conduct a brief voir dire to determine whether or not an interpreter is needed.
- (13) Before commencing the interpreting process, the appointing/requesting authority shall make a determination that the interpreter is able to readily communicate with the person needing interpreting services and is able to accurately repeat and translate the statements of that person.

Section 10. AOC Interpreter Directory

- (1) The AOC Court Interpreting Services Division shall maintain a Directory of licensed freelance interpreters and staff interpreters for the deaf and hard of hearing and certified and registered spoken language freelance and staff interpreters who have satisfied the requirements set out in Sections 8 and 9 herein, including the requirements for maintaining certification/qualification status.
- (2) The Director of the AOC shall have the authority to remove a freelance interpreter from the AOC Interpreter Directory for good cause which may include, but is not limited to, the following misconduct:
 - (a) Knowingly and willfully making false interpretation while serving in an official capacity;
 - (b) Knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;
 - (c) Failing to follow other standards prescribed by law and the Code of Professional Responsibility for Interpreters;
 - (d) Failing to appear as scheduled without good cause;
 - (e) Failing to accept and adhere to the Kentucky Certification Policy for Spoken Language Interpreters;
 - (f) Failing to accept and adhere to the Uniform Payment Rate; and
 - (g) Requesting payment for services to the Court of Justice from the person for whom the interpreter is appointed.
- (3) Any allegation of a misconduct found in this section shall be reported to the AOC Director or designee, for purposes of review. For the duration of

the review a freelance interpreter may be temporarily removed from the AOC Interpreter Directory.

- (4) Freelance interpreters may be permanently removed from the AOC Directory by the AOC Director. The interpreter shall be given notice by certified mail, return receipt requested, of the Director's action taken and shall be given an opportunity to request reconsideration within ten (10) days of receipt of the notice.

Section 11. Use of Assistive Technology

- (1) Pursuant to KRS 30A.435, in the performance of his or her duties for the Court of Justice, the interpreter may utilize electronic recording, foreign language translation, remote videoconference equipment, web-based remote interpreting service equipment, and any other appropriate equipment.
- (2) Remote interpreting services may be used for brief non-evidentiary proceedings, including pretrial interviews, initial appearances, arraignments, and direct services for the Court of Justice when necessary.
- (3) A person who is deaf, hard of hearing, or speech impaired may elect to use assistive technology in lieu of or in addition to the services of an interpreter.
- (4) Remote interpreting services may be obtained for persons with Limited English Proficiency when there is a time-sensitive matter that requires interpretation and no other resources are available.
- (5) Remote interpretation may also be appropriate for non-immediate matters that are scheduled in advance, when the interpretation of these matters cannot be handled in-person by staff or freelance interpreters in a fiscally responsible or timely manner, and the quality of interpretation is not in question.
- (6) If the equipment sought to be used is of the type approved by the AOC, or a judicial official, no further approval is required.
- (7) If the equipment is of a type for which no approval has been issued by the AOC, the use of the equipment shall be approved in writing and in

advance by the Director of the AOC or his/her designee or by the judge making the appointment

- (8) If the equipment is of a type which has been disapproved by the AOC, it shall not be used.
- (9) All equipment utilized shall be in proper mechanical and working order and shall be fit for its intended use.
 - (a) The appointing/requesting authority shall ensure the non-English speaking party hears all statements made by the participants if utilizing remote interpreting equipment. If telephone equipment is unavailable for simultaneous interpreting, the appointing/requesting authority shall allow consecutive interpretation of each sentence.
 - (b) Written documents which would normally be orally translated by the interpreter shall be read aloud to allow full oral translation of the material by the interpreter.
 - (c) The appointing authority shall ensure that the remote interpreting equipment used for the deaf and hard of hearing are in proper mechanical and working order, and fit for its intended use.
 - (d) The AOC shall provide the Court of Justice with instructions necessary for obtaining and using remote interpreting equipment and services. Only remote interpreting services contracted by the AOC shall be used.

Section 12. Removal of Staff Interpreter and Freelance Interpreter From Case

- (1) Pursuant to KRS 30A.410(2), upon request of the person for whom the interpreter is appointed or on the court's own motion, an interpreter may be removed for inability to communicate with the person, or if for reasonable cause another interpreter is desired by the person for whom the interpreter is appointed, or because the services of an interpreter are not desired by the person.
- (2) Removal for Good Cause. Additionally, a judge may remove an interpreter from his or her interpreting duties for good cause, which may include, but is not limited to:

- (a) Inability to interpret adequately, including where the interpreter or person for whom the interpreter is appointed reports such inability;
- (b) Knowingly and willfully making false interpretation while serving in an official capacity;
- (c) Knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;
- (d) Failing to follow other standards prescribed by law and the Code of Professional Responsibility for Interpreters; and
- (e) Failing to appear as scheduled without good cause.

Section 13. Disciplinary Action - Staff Interpreters

- (1) The Personnel Policies of the Court of Justice shall apply to all staff interpreters. Staff interpreters may be disciplined for misconduct which may include but is not limited to, the following:
 - (a) Knowingly and willfully making false interpretation while serving in an official capacity;
 - (b) Knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;
 - (c) Failing to follow other standards prescribed by law and the Code of Professional Responsibility;
 - (d) Failing to accept and adhere to the Kentucky Certification Policy for Spoken Language Interpreters;
 - (e) Failing to appear as scheduled without good cause; and
 - (f) Requesting payment for services to the Court of Justice from the person for whom the interpreter is appointed.

Section 14. Compensation of Interpreters by the Court of Justice

- (1) Court of Justice compensation for freelance interpreters' services shall be established by the Director of the AOC as a statewide Uniform Payment Rate. Refusal to accept and adhere to the Uniform Payment Rate shall be grounds for removal from the AOC Interpreter Directory.
- (2) For payment as authorized under these rules, the freelance interpreter

shall provide to the AOC form AOC-INT-1, Statement for Interpreting Services. The invoice must be signed by the appointing/requesting authority and by the freelance interpreter, and shall be submitted to the AOC no later than seven (7) days after the service has been provided.

- (a) For purposes of compensation of the freelance interpreter, the AOC shall limit hourly rates to begin no more than fifteen (15) minutes prior to the scheduled time in which interpreting services are being rendered. Hourly rates shall end upon the completion of the assigned interpreting service(s). Further, payment shall be made for time spent interpreting and waiting to interpret in court proceedings or direct services. If the interpreter provides services for multiple cases on the same docket, all cases shall be reported on the same AOC Statement for Interpreting Services form. The AOC shall round any "less than one-quarter hour increment" up to the next quarter hour.
- (b) Compensation for travel of freelance interpreters shall be established by the AOC Director as part of the Uniform Payment Rate.
- (c) These rules, including the rules on compensation, shall apply to Court of Justice employees (with the exception of staff interpreters) who serve as freelance interpreters. Court of Justice employees must, however, utilize annual or compensatory leave for time taken from their regular Court of Justice employment responsibilities while serving as freelance interpreters.
- (d) Cancellation and no - show policies shall be established by the AOC Director as part of the Uniform Payment Rate.
- (e) Compensation shall not be made to a freelance interpreter for time spent in preparation for scheduled interpreting services for a court proceeding or a direct service, except under extraordinary circumstances as determined and approved in advance and in writing by the AOC Director or designee.

- (f) Staff interpreters shall receive salaries and benefits according to the Court of Justice Personnel Policies, and travel shall be compensated according to the Court of Justice Travel Regulations.

Section 15. AOC Authority to Implement Court Interpreting Services Division

The AOC shall have the authority to establish additional policies or internal procedures relating to the administration of the Court of Justice interpreting services as authorized and established by the AOC Director. The AOC shall have the authority to hire staff interpreters to be employed by the AOC.

This Order shall be effective upon entry and until further Order.

Entered this the 12th day of May 2009.


CHIEF JUSTICE JOHN D. MINTON, JR.